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California Employee Arbitration Bill Vetoed

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In a move that has left employers relieved, California Governor Jerry Brown vetoed a bill (AB 465) that would have prohibited employers from implementing arbitration agreements with its employees unless those employees had counsel and negotiated the arbitration agreement. The bill also would impose a $10,000 fine on employers for each violation. In his veto message earlier this week, Governor Brown explained that the bill imposed a "blanket ban on mandatory arbitration agreements" and this ban "has been consistently struck down in other states as violating the Federal Arbitration Act (FAA)." Governor Brown also noted that the language in AB 465 had previously been rejected by both the California and United States Supreme Court. He further noted the U.S. Supreme Court is currently considering two (2) cases the state's arbitration policies under the FAA and he preferred to see the outcome of those cases before enacting such legislation. Following the 2011 U.S. Supreme Court decision in *AT&T Mobility v. Concepcion*, which found that mandatory arbitration agreements could prohibit class action litigation, many employers began implementing such agreements with its employees to minimize potential exposure, fees and costs in employment discrimination or harassment cases and altogether avoid class action claims, especially in the wage and hour arena. Additionally, many employers favor arbitration hearings rather than litigation because it avoids possible media exposure since the hearings are conducted in private and, generally, no public filings occur. Further, most employers view arbitration agreements as a mechanism for early resolution of complaints as such agreements usually include language outlining the process in which a complaint must be handled. While many employers favor mandatory arbitration agreements with their employees, employers still must use caution in drafting such agreements. For instance, a mandatory employment arbitration agreement that hinders the discovery process for the employee, creates questions regarding the neutrality of the arbitrator, or limits the statutory remedies available to the employee could be viewed as unconscionable and unenforceable.

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